JUDGMENT OF THE COURT (Fourth Chamber)
25 September 1985 *

In Case 34/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de grande instance [Regional Court], Nanterre, for a preliminary ruling in the criminal proceedings brought before that court by

Procureur de la République [Public Prosecutor]

against

Michel Leclerc,

and the defendants in civil law, DRGM SARL and Staser SARL,

on the interpretation of Articles 3 (f), 5 and 36 of the EEC Treaty,

THE COURT (Fourth Chamber),

composed of: G. Bosco, President of Chamber, P. Pescatore, T. Koopmans, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Michel Leclerc, the accused in the main proceedings, by R. Brunois, of the Paris Bar,

the French Government by J.-P. Costes and S. C. de Margerie, acting as Agents, assisted by I. Knock, Administrator,

the Commission of the European Communities by its Legal Advisers, R.-C. Béraud and G. Marenco, acting as Agents, assisted by N. Coutrelis, a member of its Legal Department,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 May 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By judgment of 16 December 1983, which was received at the Court on 7 February 1984, the Tribunal de grande instance, Nanterre, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Article 3 (f), the second paragraph of Article 5 and Article 36 of the EEC Treaty, in order to enable it to determine whether national rules imposing a minimum price on the sale of fuel to consumers are compatible with Community law.

2 The questions were raised in the context of criminal proceedings brought against Michel Leclerc in his capacity as director of two companies operating petrol stations. Mr Leclerc is accused, *inter alia*, with having charged unlawful prices, by offering fuel for sale at a discount on the retail selling price of fuel which was fixed at the time, at rates exceeding the discount permitted by the rules applicable in September and October 1980.

3 The accused in the main proceedings maintained that the rules in question, that is to say Ministerial Decree No 78-101/P of 5 October 1978 on the display of prices and on conditions of sale for regular and super-grade petrol and Ministerial Decree No 78-123/P of 29 December 1978 on the prices of certain finished petroleum products, were not compatible with Community law.

4 In those circumstances the Tribunal de grande instance, Nanterre, considered it necessary to refer to the Court of Justice for a preliminary ruling on the following questions:

(1) Must Article 3 (f) of the EEC Treaty, which provides for 'the institution of a system ensuring that competition in the Common Market is not distorted', and the second paragraph of Article 5 of the Treaty, which provides that Member States 'shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty', be interpreted as rendering inapplicable rules

of a Member State, laid down by law or regulation, fixing minimum prices or, more particularly, maximum discounts?

(2) If the first question is answered in the affirmative, must it be held that such national rules may, as applied to petroleum products, be covered by Article 36 of the EEC Treaty as meeting an essential requirement of public policy?

5 The first question concerning the interpretation of Articles 3 (f) and 5 of the EEC Treaty has already been examined by the Court in its judgment of 29 January 1985 in Case 231/83 (*Cullet* v *Centre Leclerc Toulouse* [1985] ECR 315). On that occasion the Court found itself obliged to extend its examination to the provisions which give effect to the principles set out in Articles 2 and 3 of the EEC Treaty, especially in the field of free movement of goods. In particular, the Court interpreted Article 30 of the Treaty, an examination of which must necessarily precede an examination of Article 36, which is referred to in the second question.

6 The national rules at issue in the main proceedings in this case are not the same as those which gave rise to Case 231/83. Ministerial Decree No 78-123/P differs in particular from the latter rules with regard to the fixing of the ex-refinery price. As in the case of the system at issue in Case 231/83, that price serves as the basis for the calculation of the maximum retail selling price which, in turn, determines the minimum retail selling price by means of the discounts provided for by Ministerial Decree No 78-101/P. According to Article 2 of Decree No 78-123/P, the authorized ex-refinery price is fixed at a specific amount without any indication as regards the manner in which it is calculated. With regard to the application of Community law, however, that particular feature does not raise problems which differ from those resolved by the aforementioned judgment of 29 January 1985.

7 With regard to the interpretation of Article 30 of the EEC Treaty, the reasoning of that judgment is based on the consideration that a minimum price fixed at a specific amount, although applicable without distinction to domestic and imported products, is capable of having an adverse effect on the marketing of the latter in so far as it prevents their lower cost from being reflected in the retail selling price. That is also the case with regard to a minimum price determined on the basis of an ex-refinery price fixed at a specific amount and in particular where that ex-refinery price is fixed on the basis of the prices and costs of national producers.

8 It follows that Article 30 of the EEC Treaty prohibits national rules providing for a minimum retail selling price for fuel to be fixed by the national authorities where that minimum price is determined on the basis of an ex-refinery price fixed at a specific amount, calculated in particular on the basis of the prices and costs of national producers, and thus neutralizes the competitive advantage which may result from the lower cost prices of imported products inasmuch as it prevents those cost prices from being reflected in the retail selling price.

9 With regard to the interpretation of Article 36 of the EEC Treaty, the view was taken in the aforementioned judgment of 29 January 1985 that legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of that provision.

10 Since there appears to be no new factor in this case, reference should be made to the considerations which led to the aforementioned judgment of 29 January 1985, a copy of which is annexed hereto.

11 It follows from the foregoing that the replies to be given to the questions raised by the Tribunal de grande instance, Nanterre, must be as follows:

— Articles 3 (f) and 5 of the EEC Treaty do not prohibit national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuels;

— Article 30 of the EEC Treaty prohibits such rules where the minimum price is determined on the basis of an ex-refinery price fixed at a specific amount, in particular on the basis of the prices and costs of national producers, and thus neutralizes the competitive advantages which may result from the lower cost prices of imported products inasmuch as it prevents those cost prices from being reflected in the retail selling price;

— Legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of Article 36 of the EEC Treaty.

Costs

12 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings brought before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

in answer to the questions referred to it by the Tribunal de grande instance, Nanterre, by judgment of 16 December 1983, hereby rules:

(1) Articles 3 (f) and 5 of the EEC Treaty do not prohibit national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuels;

(2) Article 30 of the EEC Treaty prohibits such rules where the minimum price is determined on the basis of an ex-refinery price fixed at a specific amount, in particular on the basis of the prices and costs of national producers, and thus neutralizes the competitive advantage which may result from the lower cost prices of imported products inasmuch as it prevents those cost prices from being reflected in the retail selling price;

(3) Legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of Article 36 of the EEC Treaty.

Bosco Pescatore

Koopmans Bahlmann O'Higgins

Delivered in open court in Luxembourg on 25 September 1985.

P. Heim
Registrar

G. Bosco
President of the Fourth Chamber